

U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 23Jan2001

Case No: 2000-BLA-00543

In the Matter of

MARGARET ANN HALL, Widow of
Robert Lee Hall,

Claimant,

v.

CROWN CITY MINING,

Employer,

and

OHIO BUREAU OF WORKERS' COMPENSATION,

Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

Party-in-Interest.

APPEARANCES (on brief):

Rita S. Fuchsman, Esquire
For the claimant

Gregory K. Johnson, Esquire
For the employer/carrier

BEFORE: DONALD W. MOSSER
Administrative Law Judge

DECISION AND ORDER - AWARDING BENEFITS

This proceeding arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S. C. § 901 *et seq.* (The Act). Benefits are awarded to coal miners who are totally disabled due to pneumoconiosis. Surviving dependents of coal miners whose deaths were caused by pneumoconiosis may also recover benefits. Pneumoconiosis, commonly known as black lung, is a chronic dust disease of the lungs arising from coal mine employment. 20 C.F.R. § 718.201 (1996).

On September 25, 2000, the claimant indicated in a letter that she wanted to waive the scheduled hearing and submit the case for a decision on the record. As counsel for the employer had no objection, the hearing was waived by my order dated September 28, 2000. Accordingly, by that order and an order dated November 3, 2000, Director's Exhibits 1 through 24 were offered and admitted into evidence.

The findings of fact and conclusions of law that follow are based upon my analysis of the entire record, arguments of the parties, and the applicable regulations, statutes, and case law. Although perhaps not specifically mentioned in this decision, each exhibit and argument of the parties has been carefully reviewed and thoughtfully considered. While the contents of certain medical evidence may appear inconsistent with the conclusions reached herein, the appraisal of such evidence has been conducted in conformance with the quality standards of the regulations.

The Act's implementing regulations are located in Title 20 of the Code of Federal Regulations, and section numbers cited in this decision exclusively pertain to that title. References to DX refer to the exhibits of the Director.

ISSUES

The following controverted issues remain for decision:

1. whether the claim was timely filed;
2. whether Mr. Robert Lee Hall had pneumoconiosis as

defined by the Act and regulations;

3. whether his pneumoconiosis arose out of coal mine employment; and,

4. whether the miner's death was due to pneumoconiosis.

(DX 23).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

The miner, Robert Lee Hall, was born November 12, 1934 and died on May 9, 1998. (DX 1). The claimant, Margaret Ann Hall, married Mr. Hall on April 17, 1954. (DX 1; 22, p. 38). Mr. Hall's certificate of death lists pneumonia and congestive heart failure as the causes of his death. (DX 2). Rheumatoid arthritis is also listed as another significant condition contributing to death. Mrs. Hall has not remarried.

Mr. Hall had filed a claim for benefits on November 16, 1989. (DX 22, p. 45). The claim was denied by the Director, Office of Workers' Compensation Programs on April 6, 1990, and no further action was taken. (DX 22, p. 1). Thus, that claim was abandoned and is not involved in this proceeding.

The survivor's claim involved in this proceeding was filed by Mrs. Hall on October 7, 1998. (DX 1). The application was denied by the Director, Office of Workers' Compensation Programs on February 24, 1999, (DX 9), and again on November 5, 1999. (DX 17). Mrs. Hall requested a hearing on January 4, 2000. (DX 20). The claim was referred to this office on March 16, 2000. (DX 23).

Timeliness

There is no time limit on the filing of a claim by the survivor of a miner. 20 C.F.R. § 725.308(a). Therefore, Mrs. Hall's claim is timely filed.

Responsible Operator and Length of Coal Mine Employment

Crown City Mining is the properly designated responsible operator as it employed Mr. Hall for at least one year and was

his final coal mine employer. (DX 22, p. 42).

Pneumoconiosis and Related Issues

I. Medical Evidence

A. X-rays

<u>DATE OF X-RAY (REREADING)</u>	<u>EXHIBIT NO.</u>	<u>PHYSICIAN/ QUALIFICATIONS</u>	<u>READING</u>
12/13/89 (1/31/90)	DX 22, p. 36	W. Cole/Board certified radiol- ogist and B reader ¹	Unreadable film quality
2/13/90	DX 22, p. 37	S. Hojat	Old fibrotic changes in both lower lobes and right mid-lung zone with pleural thickening at the bases; pleural calcification at the right base and evidence of a mild chronic obstruc- tive pulmonary disease

¹When evaluating interpretations of miners' chest x-rays, the administrative law judge may assign greater evidentiary weight to readings of physicians with greater qualifications. 20 C.F.R. § 718.202(a)(1); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The Benefits Review Board and the Sixth Circuit Court of Appeals have approved attributing more weight to interpretations of B-readers because of their expertise in this area. *Meadows v. Westmoreland Coal Co.*, 6 BLR 1-773 (1984); *Warmus v. Pittsburgh & Midway Coal Mining Co.*, 839 F.3d 257, 261, n.4 (6th Cir. 1988). A B-reader is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successfully completing an examination conducted by or on behalf of the Department of Health and Human Services. See 42 C.F.R. § 37.51(b)(2). The Benefits Review Board has also ruled that an x-ray interpretation by a physician with dual qualifications of a B-reader and certification by the American Board of Radiology may be given greater evidentiary weight than an interpretation by any other reader. *Scheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984).

2/15/90
(2/27/90)

DX 20, p. 35

J. Gordonson/
Board certified
radiologist and
B-reader

1/1; q/t; 6 zones

B. *Medical Reports*

Dr. Howard E. Linder examined Mr. Hall on December 13, 1989. (DX 22, p. 16). He considered symptoms of shortness of breath and sputum production, a medical history, a physical examination, and the results of a chest x-ray, pulmonary function study, blood gas study and EKG. He also noted 14½ years of coal mine employment, most recently as a foreman at a strip mine, and a smoking history of one pack of cigarettes per day, on and off since 1975, once quitting for a year. He diagnosed pulmonary fibrosis with pleural thickening and calcification and the mild suggestion of a defect in diffusing capacity, related to the pulmonary fibrosis. Dr. Linder noted an insignificant smoking history but a significant work history. He found it problematic, however, to separate the pulmonary fibrosis and diffusion defect from the severe rheumatoid arthritis versus occupational exposure. Dr. Linder assessed a 20-30% impairment based on the pulmonary fibrosis, which he felt was due to a combination of occupational exposure and rheumatoid lung disease, with occupational exposure probably being the greater contributor.

The miner died on May 9, 1998. (DX 2). The death certificate, signed by Dr. R. Brownfield, lists pneumonia and congestive heart failure as the causes of death, with rheumatoid arthritis being a significant condition contributing to but not resulting in the underlying cause of death.

An autopsy was performed by Dr. Darlene Y. Gruetter on May 10, 1998. (DX 3). It appears from the record that only a gross autopsy was performed. She diagnosed: (1) diffuse bilateral benign fibrocalcific plaques of pleural wall and diaphragm; (2) extensive pleural adhesions with obliteration of pleural cavity; (3) bilateral acute bronchopneumonia; (4) moderate bilateral emphysema in the upper lobes; and (5) bilateral anthracosilicotic nodules. Dr. Gruetter listed the cause of death as acute bronchopneumonia superimposed on severe chronic lung disease.

Dr. Peter Ottaviano provided a letter dated August 13,

1999, in which he explained that he had taken care of Mr. Hall during a hospitalization in May 1998, which ended with the miner's death. (DX 14). He stated that the cause of death was acute bronchopneumonia superimposed on severe lung disease. Based on the autopsy report, which showed anthracosilicotic nodules bilaterally, a significant occupational exposure to coal dust, and his own knowledge of the claimant, Dr. Ottaviano opined that pneumoconiosis was a contributing factor in the miner's death.

II. Discussion

For survivors' claims filed after January 1, 1982, benefits are provided to eligible survivors of a miner whose death was due to pneumoconiosis or whose cause of death is significantly aggravated by pneumoconiosis. 20 C.F.R. § 718.205(c). Subsection (c) of Section 718.205 sets forth methods for proving death due to pneumoconiosis. Section 718.202 provides the methods for proving the existence of pneumoconiosis. 20 C.F.R. § 718.202 (a)(1)-(4).

Under Section 718.202(a)(1), a chest x-ray conducted and classified in accordance with Section 718.106 may be the basis for a finding of the existence of pneumoconiosis. There are single readings of three separate x-rays. The first film was found unreadable by Dr. Cole, a Board-certified radiologist who is also a B-reader. The next film was read by a physician whose qualifications do not appear of record. He found old fibrotic changes and mild chronic obstructive pulmonary disease but did not specifically find pneumoconiosis. The final x-ray was read by Dr. Gordonson, who is a Board-certified radiologist and B-reader, as positive for pneumoconiosis.

The first x-ray could not be read due to the film quality. However, the final x-ray was found positive by a highly qualified reader, and the second x-ray does not detract from that conclusion. Thus, I find that the weight of the x-ray evidence supports a finding of pneumoconiosis pursuant to Section 718.202 (a)(1). See *Island Creek Coal Co. v. Compton*, 211 F.3d 569 (4th Cir. 2000); *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 24-25 (3rd Cir. 1997). See *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*).

Under Section 718.202(a)(2), an autopsy conducted in accordance with Section 718.106 may form the basis for a finding of the existence of pneumoconiosis. In this case, an autopsy was performed which I find is in substantial conformance with Section 718.106. Dr. Gruetter, who performed the autopsy, found bilateral anthracosilicotic nodules. As anthracosilicosis is included in the legal definition of pneumoconiosis, I find that the autopsy evidence establishes the existence of pneumoconiosis. See 20 C.F.R. § 718.201.

Section 718.202(a)(3) provides that it shall be presumed that the miner is suffering from pneumoconiosis if the presumptions described in Sections 718.304, 718.305 or 718.306 are applicable. Since there is no x-ray evidence of complicated pneumoconiosis in the record, Section 718.304 does not apply. Section 718.305 does not apply because it pertains only to claims that were filed before January 1, 1982. Finally, Section 718.306 is not relevant since it is to be used in connection with the claims of miners who died on or before March 1, 1978.

A determination of the existence of pneumoconiosis may also be made under Section 718.202(a)(4). This subsection provides for such a finding where a physician, exercising sound medical judgment, notwithstanding a negative x-ray, finds that the miner suffers from pneumoconiosis. Any such finding shall be based upon objective medical evidence and shall be supported by a reasoned medical opinion.

Only one physician examined Mr. Hall in connection with his original claim. Dr. Linder diagnosed pulmonary fibrosis which he felt was due to the miner's occupational exposure as well as his rheumatoid lung disease. Thus, his conclusion is equivalent to a finding of pneumoconiosis. *Heavilin v. Consolidation Coal Co.*, 6 BLR 1-1209, 1-1212 (1984). Dr. Gruetter, who performed the autopsy, found bilateral anthracosilicotic nodules. Dr. Ottaviano opined that Mr. Hall suffered from pneumoconiosis.

I credit Dr. Linder's report because it is well documented and reasoned. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). It is also supported by the later x-ray interpretation of Dr. Gordonson. I also place weight on Dr. Ottaviano's

opinion because he had apparently attended Mr. Hall during his final hospitalization, and was thus familiar with his condition and history. Dr. Ottaviano further relied on the autopsy results, which showed bilateral anthracosilicotic nodules. I defer to his ability to synthesize all this information in reaching his conclusion. While a finding on autopsy of anthracotic pigmentation, by itself, is insufficient to establish the existence of pneumoconiosis, Dr. Gruetter actually found anthracosilicotic nodules, and this finding, when combined with the x-ray evidence and the opinions of Drs. Linder and Gruetter, strongly support a determination of pneumoconiosis. Consequently, I find that the medical opinion evidence supports a finding of pneumoconiosis. 20 C.F.R. § 718.202(a)(4). Furthermore, consideration of all the evidence under Section 718.202(a) establishes the existence of pneumoconiosis. *Cornett v. Benham Coal Co.*, 227 F.3d 569 (6th Cir. 2000; *Island Creek Coal Co. v. Compton*, 211 F.3d 569 (4th Cir. 2000).

It must also be determined whether the pneumoconiosis which Mr. Hall suffered was caused at least in part by his coal mine employment. In this case, however, that relationship may be presumed because it has been established that Mr. Hall worked at least ten years as a coal miner. 20 C.F.R. § 718.203(b). Moreover, the weight of the medical evidence fails to establish any cause for the miner's pneumoconiosis other than coal mine employment. Thus, the presumption is not rebutted.

Finally, Mrs. Hall must also prove that pneumoconiosis caused the miner's death. Section 718.205(c) provides that with respect to survivors' claims filed after January 1, 1982, death will be considered due to pneumoconiosis if any one of the following criteria are met:

(1) where competent medical evidence establishes the miner's death was due to pneumoconiosis; or,

(2) where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis; or,

(3) where the presumption set forth in Section 718.304 is applicable.

Initially, I note that the presumption at Section 718.304 is not applicable to this claim because there is no evidence of complicated pneumoconiosis. Therefore, death due to pneumoconiosis is not established by this method. 20 C.F.R. § 718.205 (c)(3).

Section 718.205(c)(2) presents a liberal standard for proving "death due to pneumoconiosis." Moreover, some of the circuits which have considered that standard have accepted the interpretation of the Director "that the words 'substantially contributing cause or factor leading to the miner's death' . . . means anything that has 'an actual or real share in producing an effect' and that any condition which hastens death fits this description." *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 1004 (3d Cir. 1989); see also *Shuff v. Cedar Coal Co.*, 967 F.2d 977 (4th Cir. 1992); *Peabody Coal Co. v. Director, OWCP*, 972 F.2d 178 (7th Cir. 1992).

The death certificate, autopsy report, and the opinion of Dr. Ottaviano bear on this issue. The death certificate lists pneumonia and congestive heart failure as the causes of death. Pneumoconiosis is not mentioned. Dr. Gruetter announced the cause of death to be acute bronchopneumonia superimposed on severe chronic lung disease. As previously noted, among the other respiratory findings she made was bilateral anthracosili-cotic nodules. Dr. Ottaviano concurred with Dr. Gruetter's opinion regarding the cause of death. However, he added that pneumoconiosis was a contributing factor in the death.

I place the greatest weight on Dr. Ottaviano's opinion because only he was in the position to consider not only the autopsy report but also the miner's medical and occupational histories. As such, I consider his opinion well-reasoned. It is further supported by Dr. Linder's opinion that the miner's pulmonary fibrosis was due both to coal mine dust exposure and rheumatoid lung disease. Finally, the history of 17 years of coal mine employment, primarily as a mine foreman, lends even more credibility to this determination. (DX 22, p. 41-42). Accordingly, I find that Mrs. Hall has established that the miner's death was hastened in some way by, and thus, contributed to, by pneumoconiosis. *Brown v. Rock Creek Mining Co.*, 996 F.2d 812 (6th Cir. 1993). Therefore, I find Mrs. Hall is entitled to survivor's benefits.

Date of Entitlement

The onset date for the payment of black lung benefits in the case of a survivor's claim is the month of the miner's death. 20 C.F.R. § 725.503(c). Because Mr. Hall died in May 1998, Mrs. Hall's benefits will commence as of May 1, 1998.

Attorney's Fee

Forty-five days are allowed to Mrs. Hall's counsel for the submission of an application for an attorney's fee. The application shall be prepared in strict accordance with 20 C.F.R. §§ 725.365 and 725.366. The application must be served on all parties, including the claimant, and proof of service must be filed with the application. The parties are allowed thirty days following service of the application to file objections to the application for an attorney's fee. In the event this decision is appealed, claimant's counsel can elect to withhold the filing of her fee petition pending the appeal.

ORDER

IT IS HEREBY ORDERED that the employer, Crown City Mining, is to:

1. pay to Mrs. Margaret Ann Hall all benefits to which she is entitled under the Act, commencing May 1, 1998;
2. pay to the Secretary of Labor reimbursement for any payment the Secretary has made to the claimant under the Act and to reduce such amounts, as appropriate from the amounts the employer is ordered to pay under paragraph 1 above; and,
3. pay to the Secretary of Labor or to the claimant, as appropriate, interest computed in accordance with the provisions of the Act or regulations.

A
DONALD W. MOSSER
Administrative Law Judge

NOTICE OF APPEAL RIGHTS. Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within 30 days from the date this decision is filed with the District Director, Office of Workers' Compensation Programs, by filing a notice of appeal with the Benefits Review Board, ATTN: Clerk of the Board, P.O. Box 37601, Washington, D.C. 20013-7601. See 20 C.F.R. §§ 725.478 and 725.479. A copy of a notice of appeal must also be served on Donald S. Shire, Esquire, Associate Solicitor for Black Lung Benefits. His address is Frances Perkins Building, Room N-2117, 200 Constitution Avenue, NW, Washington, D.C. 20210.